



FALLBROOK UNION
ELEMENTARY SCHOOL DISTRICT

Child Nutrition Services Department
409 W. Fallbrook Street
Fallbrook, CA 92028
760-847-9364

Request for Proposal #413-24-25

Fresh Produce

For
Fallbrook Union Elementary School District

Proposals Due:

Thursday May 31st, 2024
by 3:00 pm PST

Fallbrook Union Elementary School District
RFP No. 413-24-25
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Fallbrook Union Elementary School District
RFP No. 413-24-25
Notice of Request for Proposals

Notice is hereby given that Fallbrook Union Elementary School District is requesting proposals from qualified providers for the purchase of **Fresh Produce** for the nutrition programs of the above-named District.

The Board of Education/Trustees for the FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT, CA (San Diego County), will receive electronic proposals for RFP Number #413-24-25 for the procurement of the following:

Fresh Produce

RFP documents are located on the FUESD website at <https://www.fuesd.org/proposals/> Electronic proposals must be received by Fallbrook Union Elementary School District promptly by 3:00 PM, on Friday May 31st, 2024. Proposals received after that time will not be considered and will be returned to the proposer. Proposals shall be opened at 10:00 AM on Monday June 3rd, 2024.

FUESD is not responsible for proposals sent via U.S. Mail, UPS, Federal Express, or by any other delivery service. It is the vendor's responsibility to ensure that their proposal is delivered electronically to yvenegas@fuesd.org. Each proposal must conform and be responsive to the contract documents. No proposal may be withdrawn for ninety (90) days after the day off opening.

FUESD reserves the right to reject any or all proposals, to waive any discrepancy or technicality, and to award the contract for goods or services to other than the lowest proposal. The award of contract, if made by FUESD, will be to the qualified firm whose proposal best complies with all the requirements set forth in the proposal documents and whose proposal, in the opinion of FUESD, while complying with all legal requirements, is in the best interest of the district listed above. Packets are available at <https://www.fuesd.org/proposals/>.

Refer any questions to: Yessica Venegas, Accounting Specialist, at yvenegas@fuesd.org or (760) 847-9364.

**Fallbrook Union Elementary School District
RFP No. 413-24-25
Schedule of Important Dates**

| | |
|--------------------------------------------------------------|-----------------------------------------|
| Dates of Advertisements | May 13, 2024 -May 24, 2024 |
| Deadline for Requests for Clarification | May 20, 2024 by 3:00 pm |
| Response to Requests for Clarification Sent | May 22, 2024 |
| Proposals Due | May 31, 2024 by 3:00pm |
| Proposal Opening Date | June 3 rd , 2024 at 11:00 am |
| Winning vendor with Scoring Sheet published to FUESD website | June 4, 2024 by 4:00 pm |
| Protest Deadline | June 7, 2024 at 10:00 am |
| Date of Board Meeting for Contract Award | June 27, 2024 |
| District Sends Out Notice of Intent to Award | June 28, 2024 |

**Fallbrook Union Elementary School District
RFP No. 413-24-25
Request for Proposal Signature Page**

Request for Proposal Signature Page

Fallbrook Union Elementary School District (FUESD) is requesting proposals from suppliers of **Fresh Produce** to provide service to the District's schools for the CACFP, NSLP & Summer Meal Programs. The District requires bidders to have knowledge and experience in fresh produce for school programs. The District's approximate expensed amount for fresh produce in **SY24-25: \$250,000.00**

Before bidding, please read the Instructions, Required Proposal Documents, and Contract Agreement and thoroughly acquaint yourself with the products and services requested. Submit all proposals electronically with the RFP Number, Name of the Vendor, submission due date and time in the subject field. Proposals must reach the email of yvenegas@fuesd.org by the time and date listed above. Follow the Required Proposal Documents Checklist to assist with ensuring a complete proposal package.

If further clarification is needed, contact Yessica Venegas, Accounting Specialist at yvenegas@fuesd.org.

The undersigned hereby proposes and agrees to furnish and deliver the goods or services as quoted in accordance with the terms, conditions, specifications, and prices herein quoted.

Signed By: _____

Printed Name of Signor above: _____

Title: _____ Date: _____

Vendor Name: _____

Mailing Address: _____

City: _____ State: _____ ZipCode: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Fallbrook Union Elementary School District
RFP No. 413-24-25
Instructions to Proposers

1. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit proposals from qualified suppliers to provide Fallbrook Union Elementary School District with **Fresh Produce**. The District is seeking only ONE vendor. The term of contract shall be one year with the option of two additional one-year extensions, for a total of three years; at the discretion of the District. Further, in the event that the winning vendor is unable to fulfill the contract requirements which results in a termination of the original contract between the winning supplier and the District, a backup supplier may enter into a contract with the district upon mutual agreement without re-submitting another proposal. Proposals made in this agreement by the backup vendor shall stay effective until the end of the contract term.

This proposal defines the programs, the products and the services that are being sought from the Distributor and generally outlines the program requirements. Following receipt and review of the proposals, interviews may be conducted with the responsible offeror who submitted proposals. The District reserves the right to select for contract negotiations, the responsible offeror who is determined to be most advantageous to the District. The RFP may be canceled, any or all proposals may be rejected, in whole or in part, when the District determines that it is in their best interest to do so.

2. DEFINITIONS

The following terms may be used interchangeably. "FUESD" and "District" means Fallbrook Union Elementary School District. "Bid or Proposal" means response made to this solicitation by any proposer. "Supplier, Vendor, Distributor or Proposer" means offeror that submits a proposal in response to this solicitation. "Successful Vendor or Supplier" means proposer to whom award is made.

3. SCOPE OF SERVICES

The selected Distributor will partner with the District over the term of the contract resulting from this proposal solicitation to furnish and deliver Fresh Produce with distribution services to 409 W. Fallbrook Street, Fallbrook, CA 92028. The selected distributor will provide a range of fresh fruit and vegetables that matches the specifications as listed in the attached item list. The District will require delivery up to three (3) days per week. Delivery schedules will be determined by the District based on operational needs.

The initial term of this contract shall be for a period of one year with two additional one-year options to renew the contract, not to exceed three years. The initial one-year period will begin July 1, 2024 through June 30, 2025.

4. GENERAL CONDITIONS AND INSTRUCTIONS FOR SUBMITTING PROPOSAL

Proposals are requested for the purchase of fresh produce for the period of July 1, 2024 through June 30, 2025.

Proposals are to be verified before submission, as they cannot be corrected after being opened. The signatures of all persons shall be in longhand. Proposers shall fully inform themselves as to all existing conditions and limitations. No allowance will be made because of lack of such examination, inquiry, or knowledge. All proposals shall be submitted electronically with the RFP #, Name of the Vendor, submission due date and time in the subject field. It is the sole responsibility of the Vendor to see that their proposal is received in proper time. Any proposals received after the scheduled closing time for receipt of proposals will be returned to the Vendor unopened.

Each proposal must have an original signature in ink of only one (1) responsible officer or employee fully authorized to bind the organization to the terms and conditions herein. When requested by the District, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished. Failure to sign properly may result in rejection of the proposal. Obligations assumed by such signature must be fulfilled.

Corrections made of entries on the proposal must be initialed in ink by the same person who signs the form for the Vendor. No corrections can be made after the proposal due deadline.

Any questions should be directed to Yessica Venegas, Accounting Specialist, via email at yvenegas@fuesd.org or (760) 847-9364.

5. RESTRICTIONS ON LOBBYING AND CONTACT

From the period beginning with the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity submitting a response to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact, through any means, or engage in any discussion regarding this RFP, the evaluation or selection process and/or the award of the contract with any member of the District, Board of Trustees, selection members, other than the named contact herein. Any such contract shall be grounds for disqualification of the entity submitting a response.

6. WITHDRAWAL OF PROPOSALS

A vendor may withdraw a proposal electronically prior to the submission deadline. Proposals may not be withdrawn after May 31, 2024 at 3:00 pm.

7. LATE BIDS

No late Bid or Bid modifications received after the due date and time deadline will be considered.

8. AWARDS

The District shall not be obligated to accept the lowest priced proposal (price will be the primary factor for evaluating and scoring), but will be evaluating proposals with the intent of awarding to one responsible vendor. The District reserves the right to contract with any entity responding to this proposal, to reject any and all proposals without explanation or recourse and to negotiate with the vendor submitting a proposal. The District further reserves the right to contract the work with whomever and in whatever manner the District decides, to abandon the work entirely, and to waive any informality or non-substantive irregularity as the interest of the District may require. The District reserves the right of determination that item proposals meet or do not meet proposal specifications.

The District makes no representation that participation in the proposal process will lead to an award of contract, or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any proposal in response to this proposal solicitation.

The District will award the contract based on the following criteria:

1. Cost (40 points)

Proposers should submit the required products/food list thoroughly and in a manner to ensure transparency of the elements of the fixed price cost structure so that it can be easily understood, explained, and audited. The vendor proposing the lowest cost will be assigned 40 points. Each vendor subsequently will be deducted 5 points based upon their placement of the price proposed.

2. Customer Service & References (20 points)

Proposers should demonstrate their ability to promptly respond to requests for information, to resolve complaints and issues, and to provide timely and accurate delivery. Proposer's customer service staff should be easily accessible for inquiries or issues. Customer services may be rated based on responses, references and/or interview. Vendors will be given 20 points based upon their customer service background and any information collected from the references provided with excellent results. If the vendor demonstrates the ability to resolve and respond to customer necessities, complaints and issues in a timely manner, but the references' feedback is less than

satisfactory they will be awarded 10 points in this category. In the event that the vendor does not provide any information they will receive 0 points.

3. Experience and Competence (25 points)

Proposer should be able to provide state-of-the-art technology in order to provide services including online ordering, data collection, customized reports, trend analysis, information sharing, real-time reporting, and complete traceability of product. Proposer should demonstrate substantial and recent experience in providing the products to California public schools. The vendor will be given 25 points based on the years of experience provided and competence they have providing fresh produce to California Public Schools. If a vendor has less than 10 years of experience, they will be given 15 points in this category. Lastly if a vendor has less than 5 years it will be given 5 points.

4. Sustainability (15 points)

Proposer should have an integrated operation including evidence that the proposing firm will continue to operate successfully throughout the term of any contract it accepts. Proposer should have a robust level of financial capability sufficient to handle contracts as large as any contract is likely to be and on a multi-year basis. Vendors will be awarded 15 points based upon providing evidence.

The District hereby notifies all respondents that they will affirmatively ensure that, in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit its response to this RFP and no respondent will be discriminated against on the grounds of race, color, sex, age, ancestry, religion, marital status, national origin, medical condition or physical disability, or sexual orientation on consideration for the award. The vendor acknowledges that the District might contact any references provided, and any gathered feedback could be used in the evaluation process.

9. PROTEST BY PROPOSERS

A proposer may protest a proposal award if he/she believes that the award is inconsistent with FUESD Board policy, the proposal's specifications, or is not in compliance with law. A protest must be filed in writing with the FUESD Superintendent or designee by the protest deadline. The proposer shall submit all documents supporting or justifying the protest. A proposer's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract. The Superintendent or designee shall review the documents submitted with the proposer's claims and render a decision in writing within 30 working days. The Superintendent or designee may also convene a meeting with the proposer in order to attempt to resolve the problem. The proposer may appeal the Superintendent or designee's decision to

the Board. The Superintendent or designee shall provide reasonable notice to the proposer of the time for Board consideration of the protest. The Board's decision shall be final.

10. EXECUTION OF CONTRACT

The signed contract forms submitted by the proposing Vendor(s) become fully executable after the award of the contract. The complete "Contract" consists of the following documents: Notice of Request for Proposals, Schedule of Important Dates, Request for Proposal Signature Page, Instructions to Proposers Required Proposal Documents Checklist, Required Proposal Documents Description of Documents, Contract, District Information, Reference List, Suspension and Debarment Certification, U.S. Department of Agriculture, Disclosure of Lobbying Activities, Iran Contracting Act of 2010 Compliance Affidavit, Non-Collusion Declaration, Buy American Certification, Tobacco-Free School Certification, Fingerprinting Certification, and Product Lists. Failure or refusal of the successful proposer(s) to execute a contract upon award by the District may result in a claim for damages by the District and shall be grounds for immediate removal from the District' proposers list and bidding on future bid solicitations. The District may work with the backup vendor, or may reject all proposals and may issue a new solicitation for proposals.

11. DEVIATIONS FROM BID TERMS AND CONDITIONS

- a.** Should the bidder wish to request any substitutions and/or deviations, the bidder shall submit with the bid, at a minimum, descriptive technical literature (manufacturer's specification and a picture of the specific items), marked with the appropriate bid item number and fully describe the claimed "or equal" product. Suitability and valuation of "equal" rest in the sole discretion of the District. If the material product, process, service or equipment offered by the bidder is not, in the sole opinion of the District, substantially equal or better in every respect to that specified, and is rejected by the District, then the bidder expressly understands and agrees that bidder shall furnish the material, process, service, or equipment specified by the District.
- b.** Bids will only be considered if the proposed products meet the minimum requirements and conform to the specifications set forth in these bid documents. Whenever brand names are used, they are used as specifications only. The intent is to indicate quality standard and is presumed to be followed by the words "OR EQUAL". Any variances from the specified items must be clearly noted on the bid, otherwise the product will be assumed to be "as specified" - the exact product listed in the bid document. Products not meeting the criteria as determined solely by the District will be cause for the rejection of the Bid Response, or product.
- c.** It is the bidder's responsibility to demonstrate equivalency of proposed products. The District has the discretion to request, and test, product

samples prior to the award of the bidder. The District reserves the right to reject all bids that do not conform to the specifications

12. SAMPLES

For evaluation purposes, samples may be required by District, samples must be delivered to the District at the bidder's expense. All samples must be tagged to identify bidder, bid number, and item number. Any sample(s) that are not provided by the listed bid opening date and time may not be considered for award. Samples must be delivered to: 409 West Fallbrook Street, Fallbrook, CA 92028, Attention: Yessica Venegas.

13. BID QUANTITIES

The quantities listed herein are estimates. The District reserves the right to order more, less or none of the quantity indicated or to withdraw a line item or the entire Bid.

14. FAILURE TO FULFILL CONTRACT

When vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the specifications, the member district may, at its sole discretion, annul and set aside the contract entered into with said vendor or contractor, either in whole or in part, and make and enter into a new contract for the same items in such manner as seems to the Board of Education to be to the best advantage of the district. Any failure for furnishing such articles or services by reason of the failure of the vendor or contractor, as above stated, shall be a liability against such vendor and his sureties. The Board of Education reserves the right to cancel any articles or services which the successful proposer may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the proposer provided satisfactory proof is furnished to the Board or Education, if requested. Failure to fulfill contract may result in proposer disqualification in subsequent year(s) due to non-responsible practices.

15. TERMINATION

The Contract may be terminated by the District without cause upon thirty (30) days' written notice to the Contractor. The District' right to terminate under this paragraph shall be in addition to any other rights reserved to the District under this Contract.

16. INDEPENDENT CONTRACTOR STATUS

The District shall view the legal position of the proposer as an "independent contractor" and that all persons employed by the proposer to furnish services are employees, agents or officers of the proposer and not of the District. The District shall not be liable for any of the Contractor's acts or omissions

performed under the contract to which the proposer is party. The proposer will complete IRS form 9 providing taxpayer identification number and also indicate whether the proposer is a corporation, sole-proprietor, partnership, individual, etc. The form must be on file with the District within sixty (60) days from the date for the Contract start date.

Contractor shall be free to contract for similar services to be performed for other employers while he/she is under contract with the District. Contractor is not to be considered an agent or employee of the District and is not entitled to participate in any pension plans, bonus, stock, or similar benefits that the District may provide for its employees. District and Contractor acknowledge Labor Code section 2750.3 and its potential impact on independent contractor relationships. District and Contractor agree that (a) Contractor will remain free from the control and direction of the District in connection with the performance of the services; (b) the scope of work contemplated by this agreement is outside the usual course of the District' business; and (c) Contractor is customarily engaged in an independently established trade, occupation, or business of the same nature as the services performed under this agreement. Notwithstanding the provisions of Section 2750.3, Contractor desires to maintain independent contractor status in relation to the Services provided for the District hereunder. Contractor certifies that it shall not subcontract any of the services provided in accordance with this Contract and shall indemnify and hold harmless the District, its governing board, trustees, officers, agents, representatives, employees and volunteers from all employment related claims arising out of the employment relationship between the District and Proposer or its subcontractors or employees, including claims of misclassification under Labor Code section 2750.3.

**Fallbrook Union Elementary School District
RFP No. 413-24-25
Required Proposal Document Checklist**

Vendors responding to this RFP must follow the format in the section of Required Proposal Documents. The following must be completed and submitted with the proposal package:

| | Initials |
|------------------------------------------------------------------------------------------|----------|
| 1. Cover Letter (Note: Provide your own document with requested information) | |
| 2. Request for Proposal Signature Page | |
| 3. Contract (SAMPLE) | |
| 4. Reference List | |
| 5. Public Liability and Property Insurance (Note: Provide your own document.) | |
| 6. Worker's Compensation Certificate (Note: Provide your own document) | |
| 7. Hazard Analysis Critical Control Point Plan (Note: Provide your own document.) | |
| 8. Food Security and Safety Program (Note: Provide your own document.) | |
| 9. Product Recall Program (Note: Provide your own document.) | |
| 10. Disaster Contingency Plan (Note: Provide your own document.) | |
| 11. Evidence of Satisfactory Third-Party Safety Audits (Note: Provide your own document) | |
| 12. Suspension and Debarment Certification, U.S. Department of Agriculture | |
| 13. Disclosure of Lobbying Activities | |
| 14. Iran Contracting Act of 2010 Compliance Affidavit | |
| 15. Buy American Certification | |
| 17. Clean Air and Water Act | |
| 17. Tobacco-Free School Certification | |
| 18. Fingerprinting Certification | |
| 19. Signature Page | |
| 20. Non-Collusion Declaration | |
| 21. Required Proposal Documents Checklist | |
| 22. Product List with Pricing and Specs Breakdown (Note: Provide your own document.) | |
| 23. Payment Documentation | |

Completed by: _____

Title: _____

Signature: _____

Date: _____

Fallbrook Union Elementary School District
RFP No. 413-24-25
Required Proposal Document Descriptions

1. Cover Letter

Proposers must submit a cover letter on vendor letterhead that is a maximum of three (3) single-sided pages and includes the following:

- RFP number in the beginning of the letter.
- A brief statement of interest and summary of relevant qualifications to engage in a professional relationship with the District.
- The following statement: "I certify that I have read the attached RFP and accompanying instructions and that I am authorized to commit the firm to the proposal submitted."
- Name and Nature of Vendor's Legal Entity: Specify in the proposal the name and nature of the legal entity and any fictitious name(s) under which it does any business. An authorized officer or person shall sign the proposal under the correct firm name. This section should include the following information:
 - Vendor name
 - Address
 - Name of contact person
 - Phone number
 - Email address
 - Year Vendor was established
 - Number of employees
 - Website/Social Media page
 - Signature of authorized officer or person
 - Corporate seal (if a corporation)

2. Request for Proposal Signature Page

An authorized officer or person shall sign the proposal under the correct firm name.

3. Contact

The form of contract, which the successful proposer, as Vendor, will be required to execute, is included in the contract agreement section and should be carefully examined and completed by the proposer. Proposers are required to fill in the blank lines in the contract to complete the proposal. No proposals shall receive consideration by the district unless this contract agreement is completely filled out and signed with the proposal. The complete contract consists of the following documents: The Notice to Proposers, the Instructions to Proposers, the Accepted Bid, and the Contract Agreement, including all modifications thereof duly

incorporated therein. All of the above documents are intended to cooperate and be complementary so that any instructions or requirements called for in one and not mentioned in the other, or vice versa, are to be executed the same as if mentioned in all said documents. The winning vendor and, when applicable, the backup vendor will be required to execute the signed contract agreement when the RFP is awarded. Vendors who are not awarded the RFP are not required to execute the signed contract agreement.

4. Reference List

Please supply the contact information for three (3) references from local (within one hundred miles of the District) School District Food & Nutrition Services. List must include the following information for each contact:

- District name
- Address
- Contact name and telephone number

5. Public Liability and Property Insurance

Vendor shall maintain during the life of this contract General Liability and Property Damage Insurance to protect themselves and, as an additional insured, the District, its governing boards, its officers, its agents, and its employees from all claims for personal injury, including accidental death, as well as from all claims for Property Damage arising from the operations under this contract. The minimum amounts of such insurance shall be as hereinafter set forth and be primary over any other insurance carried by the District. Vendors are required to furnish certificates of insurance, along with the additional insured endorsements, prior to start of work.

- Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): Not Less Than \$1,000,000/\$2,000,000 Aggregate.
- Property Damage Liability Insurance including auto (both owned and non-owned): Not Less Than \$1,000,000 Aggregate.
- Insurance certificate must name the District(s) as additional insured.
- Certificate to be submitted by Vendor prior to award.

6. Worker's Compensation Certificate

Workers' Compensation insurance shall be maintained as required by California law. Proof of such insurance must be completed and submitted with your proposal.

7. Hazard Analysis Critical Control Point Plan

Distributors on this contract must have a HACCP Program in place for the company. A copy of the vendor's HACCP Plan must be submitted with this proposal.

8. Food Security and Safety Program

A copy of the Distributor's Food Security and Safety Program must be submitted with this proposal.

9. Product Recall Program

A copy of the Distributor's Product Recall Program must be submitted with this proposal.

10. Disaster Contingency Plan

A copy of the Distributor's Disaster Contingency Plan must be submitted with this proposal.

11. Evidence of Satisfactory third-party safety audits

A copy of the third-party safety audit conducted during each of the last three years must be submitted with this proposal. These audits must be completed by an accredited food safety auditing organization.

12. Suspension and Debarment Certification, U.S. Department of Agriculture

This form must be completed and submitted with this proposal.

13. Certification Regarding Lobbying & Disclosure of Lobbying Activities

This form must be completed and submitted with this proposal.

14. Iran Contracting Act of 2010 Compliance Affidavit

Pursuant to the Iran Contract Act of 2010 (Public Contract Code 2200-2208), Vendors/Proposers are ineligible to proposal on or submit a proposal for any contract with a public entity for goods or services of one million dollars (\$1,000,000) or more if the Vendor/Proposer engages in investment activities in Iran. For proposals \$1,000,000 or more, proposers must certify that it is not on the list of ineligible vendors prohibited from doing business with the State of California and shall complete the Iran Contracting Act of 2010 Compliance Affidavit attached and submit with their proposal at the time of proposal. Failure to do so may deem your proposal non-responsive.

15. Buy American Certification

This form must be completed and submitted with this proposal.

16. Clean Air and Water Act

Proposer must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (41 U.S.C. 1857c-8(c)(I)) and the federal Water Pollution Control Act as amended (33 U.S.C. 12511387). Proposals without this certification will not be considered.

17. Tobacco Free School Certification

This form, regarding the District' campus policies, must be completed and submitted with your proposal. Proposals received without this form/certification will not be considered.

18. Fingerprinting Certification

This form must be completed and submitted with your proposal. Proposals received without this form/certification will not be considered.

19. Signature Page

This page must be completed and submitted with your proposal.

20. Non-Collusion Declaration

Vendors on this contract are required to submit a Declaration of Non-Collusion with their proposal. This form is included with the proposal package and must be signed and notarized under the penalty of perjury and dated.

21. Required Proposal Documents Checklist

This checklist must be completed and submitted with your proposal.

22. Products List with Pricing

Distributor must submit a list of products with applicable pricing.

23. Payment Requirement

The awarded proposer(s) must provide a current signed W-9, Request for Taxpayer Identification (TIN) and Certification to the District before payment is rendered.

Fallbrook Union Elementary School District
RFP No. 413-24-25
Contract Agreement

THIS CONTRACT ("Contract"), made and entered into this _____ day of _____, 2024, by and between Fallbrook Union Elementary School District (the "District"), and _____ ("Vendor").

RECITALS

WHEREAS, the District has been granted authority to solicit for products and services.

WHEREAS, awarding of the proposal will be decided upon the District.

WHEREAS, on behalf of the District, the District has solicited proposals for fresh produce. The Request for Proposals # 413-24-25 ("the RFP"), whereby the District may agree to purchase specified products for District use from the successful proposer(s).

WHEREAS, Vendor is the successful proposer or backup proposer under such RFP, and the District and Vendor hereby desires to set forth this Contract with respect to the sale to the District and the purchase from Vendor, of Products on the terms and conditions hereinafter set forth.

WITNESSES: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. TERM OF AGREEMENT

This proposal will be a one (1) year proposal with an initial contract period from July 1, 2024 through June 30, 2025. This contract may be extended for two additional one (1) year periods not to exceed three (3) years.

2. CONTRACT RENEWALS

This contract is deemed to be a CONTRACT FOR PRODUCTS AND DISTRIBUTION SERVICES. Under the California Education Code Article 3, Section 17596, if mutually agreeable, the Districts reserve the right to renew the contract for two (2) additional twelve (12) month periods not to exceed three (3) years. This renewal is contingent upon competitive pricing and upon all terms and conditions of the original contract having been met to the satisfaction of the Districts. Such renewal will be made by notifying the Distributor, in writing, thirty (30) days prior to the expiration of the contract.

The percentage markup and the landed costs may be "subject to adjustment" at the beginning of each annual contract period. It is expressly understood that the

contract rate increases are not automatic or guaranteed. The Distributor's request to increase the current rate schedule will be evaluated and considered when such adjustments are requested. The Districts reserve the right to reject any such request and re-bid and/or terminate said contract within the provisions of the existing agreement. It is understood that increases in the manufacturer's and/or processors landed costs to the Distributor are out of the control of the Distributor. Those price adjustments may be accepted or rejected by the Districts. Increases in the percentage markup price(s) in this RFP may not exceed the increase in the Consumer Price Index Urban for the San Diego region or price increases verified by labor rate increases justified by increases in labor contracts or State of California Department of Industrial Relations prevailing wage rates. The specific index to be reviewed is the C.P.I. for San Diego County, California for the month of [that month which is six (6) months prior to the contract's annual end date] each year using the "Special Aggregate Index" category of "All Items Less Shelter" under the "All Urban Consumers" column.

3. DISCONTINUANCE OF SERVICE

Failure on the part of the successful Vendor to meet contract requirements shall be cause for cancellation, without further notice or demand by the District. Either party may cancel the contract upon a thirty (30) day written notice to the other party prior to the end of the contract term.

The District reserves the right to discontinue service upon 24-hours' notice for due cause which shall include such reasons as unsatisfactory product or service; or to extend the contract with present Vendor upon annual review of weighted factors, performance of service and/ or provision of quality products. FAILURE TO FURNISH ALL ITEMS INCLUDED IN THE CONTRACT SHALL CONSTITUTE UNSATISFACTORY SERVICE.

The District shall hold the successful Vendor liable and responsible for all damages which may be sustained because of its failure to comply with any conditions herein. If the successful Vendor fails to furnish or deliver any material, supplies, equipment, or services at the prices quoted, or at the times and places stated, or otherwise fails to comply with the terms of the documents in their entirety, the District may purchase the items herein specified elsewhere, without notice to the successful Vendor. Additional costs accrued by the District through this purchase may be deducted from unpaid invoices or must be paid to the District by the successful Vendor. Prices paid by the District shall be considered the prevailing market prices at the time such purchase is made. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

4. PRICING

The pricing proposed must remain in effect for the term of the contract, including any annual extensions. The proposed pricing methodology will also be applied to any new products requested. New commercial food products shall be priced using the Distributor's landed cost. Landed cost is defined as invoice cost from the manufacturer plus freight, if freight is not included with invoice cost.

5. PRICE ADJUSTMENTS

The successful Distributor shall be allowed to adjust prices on allowable bid prices upon presentation of suitable proof of a price increase from a manufacturer or processor. A notice shall be sent including proof of any increase thirty (30) days prior to the increase. No increase to the price will be allowed sooner than one hundred eighty (180) calendar days from the date of proposal award, including thirty (30) calendar days advance written notice. Any change to the price shall be subject to mutual agreement by both parties. In the event of a decline in price, the successful Distributor is to give the Districts the immediate advantage of such a decrease and inform the Districts of the decrease. All orders placed under this agreement shall be delivered and invoiced at the Contract price prevailing at the time the order is placed, regardless of the actual delivery date.

6. FUEL SURCHARGES

Absolutely no fuel charges will be accepted under this contract and the addition of such charges shall not be permitted during the period of the term of this contract.

7. ORDER CONDITIONS/DELIVERY MINIMUMS

There shall be no minimums in dollar volume or case counts. However, Districts shall be mindful of delivery sizes and case counts to keep distribution productive.

The Districts shall not be obligated to purchase or reimburse the Distributor for any inventory of any products should purchases vary from the anticipated purchase patterns or if the agreement expires or is terminated.

8. VEHICLE DELIVERY CONDITIONS

All vehicles and containers used for transporting foodstuffs must be kept clean and maintained in good repair and condition in order to protect foodstuffs from contamination, and must be designed and constructed to permit adequate cleaning and/or disinfection.

Vehicles must be capable of maintaining foodstuffs at appropriate temperatures and, where necessary, designed to allow those temperatures to be monitored. This means that vehicles that transport perishable food items, either frozen or refrigerated, must be equipped with appropriate refrigeration systems in order to maintain products at appropriate temperatures.

Frozen food items must be delivered frozen solid without any signs of being thawed and refrozen. Ice cream should be received at 8°F or lower.

Dairy products and refrigerated processed foods must be delivered at an internal temperature of at least 40°F or lower.

Dry items and canned goods must be received between 50°F and 70°F. Canned, jar and bottled goods must be in good condition with no broken seals, dents, rust, cracks, swollen ends or leakage of any type. Dry items must be received dry with no tears, puncture, holes or signs of moisture.

Additionally, products will be delivered free of infestation including but not limited to larvae and rodent droppings.

ANY PRODUCT THAT FAILS TO BE DELIVERED WITHIN THESE PARAMETERS WILL BE REJECTED.

9. PRODUCT QUALITY CONTROL

The District reserves the right to discontinue service of all or any portion of any contract resulting from this proposal for any reason determined by the District to be detrimental to the health and welfare of the students and school personnel, or failure to meet contract specifications or wholesomeness standard, and to hold the contractor in default.

All products received under this contract shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Vendor's plant is located or by the applicable federal standards, whichever is higher.

Distributor shall provide products from manufacturers with a Hazard Analysis Critical Control Point (HACCP) system in place. Additionally, Distributor shall ensure that all products received under this contract shall be prepared, handled and are stored in accordance with the health and sanitation standards for the County of San Diego or local city/county agency in which product was produced, State of California, and/or Federal Government, whichever is higher.

Distributor shall follow appropriate procedures for First in First out (FIFO) stock rotation system. **Products received shall not have a shelf life or expiration date less than ten (10) days from the date of delivery, without prior consent of the District.**

10. INFERIOR PRODUCT

The Vendor agrees to permit inspection of the delivered items by a representative of the District' Nutrition Services Department with the right of rejection of inferior

merchandise. The District' decision shall be final and credits must be provided upon request.

11. PACKAGING

Cases and packages shall be so constructed as to ensure safe and sanitary transportation to point of delivery. All packaging materials shall be FDA approved to meet all pertinent State and Federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, or color to the product. Damaged cases or packages may be rejected and returned for credit or immediate replacement, at no cost to the Districts for product or freight.

12. BUY AMERICAN PROVISION

Federal regulations require that to the maximum extent possible, only domestic products are purchased consistent with the "Buy American" provisions of Public Law [PL 105-336] under the Richard B. Russell National School Lunch Act. Therefore, Vendors offering product and/or product ingredients manufactured or grown in the United States may be given priority for usage under this proposal. Proposals must comply with the Buy American Provisions pursuant to Senate Bill 490 Buy American Food Act, Food and Agriculture Code sections 58596.1, et seq., and AB 778, Food and Agriculture Code section 58595. "Agricultural food products" are defined to mean a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish.

This policy will allow for an exception only in the case when an acceptable product is not available domestically, in which case other countries of origin may be considered for purchase, in accordance to Title 2, *Code of Federal Regulations (2 CFR)*, Part 200.319(a).

Pursuant to the Buy American Food Act, only agricultural food products grown, packed, or processed domestically are authorized unless any of the following exceptions apply:

- The proposal or price of a nondomestic agricultural food product is more than 25 percent lower than the proposal or price of a domestic agricultural food product; **or**
- The quality of the domestic agricultural food product is inferior to the quality of the domestic agricultural food product grown, packed, or produced non-domestically; **or**
- The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the District.

Pursuant to the Assembly Bill 778, all local educational agencies must accept the bid or price for that agricultural food product when it is grown in California before accepting a bid or price for a domestic agricultural food product that is grown outside the state, when **both** of the following are met:

- The bid or price of the California-grown agricultural food product does not exceed the lowest bid or price for a domestic food product produced outside the state; **and**
- The quality of the California-grown agricultural food product is comparable to that domestic agricultural food product produced outside the state.

In order to determine compliance with the Buy American Provisions, Proposers awarded the contract will be required to provide documentation certifying compliance with the requirements of the Buy American Provisions, as mandated by the Buy American Food Act including, without limitation, specific information about the percentage of U.S. content in any processed end product.

Vendor acknowledges and agrees to comply with the Buy American Food Act (Food and Agriculture Code section 58596.1, et seq., California Senate Bill 490), and provide District with all documentation necessary enabling District to confirm Vendor's compliance prior to delivery of each and every nondomestic agricultural commodity or product.

The documented exception must include the following:

- A description of the nondomestic commodities or products that the vendor offered and the reason they were not substituted for the domestic item.
- A synopsis of what third-party analysis was done by the vendor to determine cost and availability.

Documentation by the vendor outlining the price of both domestic and nondomestic commodities or products or lack of availability to justify the exception. The documentation states:

- The vendor informed the SFA of the nondomestic commodity or product,
- The SFA agreed to accept this food item in advance of delivery, and
- The date the commodity or product was received by the SFA.

For additional information on the Buy American Provision, please see **Title 7, Code of Federal Regulations [7 CFR], sections 210.21[d] and 220.16[d]**) : [Procurement in School Nutrition Programs - School Nutrition \(CA Dept of Education\)](#). and **USDA Policy Memo SP 38-2017**: [USDA Food and Nutrition Service Documents & Resources web page](#) and **Senate Bill 490 and Assembly Bill 778**: [Changes to the Buy American Food Act \(CA Dept of Education\)](#).

13. NUTRITIONAL INFORMATION AND LABELING

For the Districts to be compliant with California Department of Education and USDA labeling requirements, Nutrition Services requires the following information from the manufacturer: weight (gm), calories (Kcal), protein (gm), carbohydrate (gm), fat (gm), polyunsaturated fat (gm), saturated fat (gm), trans fat (gm), sodium (mg), cholesterol (mg), dietary fiber (gm), vitamin A (IU), vitamin C (mg), calcium (mg), iron (mg).

14. DELIVERY REQUIREMENTS: SUBSTITUTION AND DISCONTINUED ITEMS

Any and all products delivered during the period covered by this contract shall be only the exact manufacturer's products and code numbers as requested by the District unless prior approval has been received to deliver alternate products. The District will not allow substitutions without prior approval. No product will be represented as being in conformance with the specification when such is not the case.

If the desired product is absolutely not available for any reason, the District shall be notified **at least three business days** in advance and the District shall be given options of a product that is of the same or higher quality at the same unit cost. Authorization of a substitute product shall be at the sole discretion of the District. **When substitutions do occur, Distributor shall provide nutritional statements and ingredient listings of the replacement product to the Director or designated person prior to delivery of product.**

The Distributor must provide the specified product or an acceptable substitute, as determined by the District. If, as a result of failure to deliver specified product in a timely manner, the service of meals fails to contain the required components of a reimbursable meal, Distributor shall be required to reimburse the District for the full value of all of the identified meals, as determined by the National School Lunch Program. Financial restitution shall be made within 60 days of written request by the District.

15. DELIVERIES

The successful Distributor will make mutually acceptable delivery time options available for the District. The District reserves the right to make additions to, or deletions from, the specified delivery locations to be served at any time during the period of the contract, and revise delivery times as required. **(Delivery location with delivery time windows for the district is included in the proposal document).**

Once a mutually agreed upon delivery schedule is established between the Distributor and the District, the Distributor will provide a delivery schedule to the District.

If, at any time, a delivery cannot be made within one (1) hour of scheduled time, the Vendor/Driver must notify the District to negotiate an alternate delivery time or day. If a delivery is within the time frame of forty-five (45) minutes of the delivery site daily closing time, the District reserves the right to refuse the late delivery and will assume no financial obligation. If the delivery is refused, to ensure no disruption to meal service, a representative from the Distributor must contact the District to negotiate an alternate delivery day and time. Frequent occurrences may result in cancellation of the Contract. The District may refuse unscheduled deliveries at the Vendor's expense.

The Distributor must guarantee a 95% fill rate for all District orders. For any District order, if the Proposer is unable to perform under the terms of the Contract, or if it fails to deliver any items ordered within the prescribed timelines, the District reserves the right to cancel any order(s) or purchase the item(s) on the open market, and to request and receive payment from the Proposer for the difference between the contract price and the price the District pays on the open market.

16. ACCOUNTING

Invoices will be furnished at time of delivery and include delivery site, product name, quantity ordered, quantity delivered, unit size, and unit price. A copy of the invoice is to be kept by the Vendor. The original invoice must be signed by the individual receiving the product and is to be left for the child nutrition site designee (e.g. lead, manager). An invoice signed by the child nutrition site designee is required in order for the invoice to be processed for payment.

In the case of a return or shortage, a legible Delivery Discrepancy Receipt shall be written at time of delivery and left at the site. Credits shall be issued in a timely manner.

17. PAYMENT REQUIREMENT

If awarded this contract, the vendor must provide a current signed W-9, Request for Taxpayer Identification (TIN) and Certification to the District before payment is rendered. The payment terms of this contract shall be "Net 30 days" unless otherwise indicated below. All invoices are due and payable within 30 days from the statement date.

18. ADDITIONAL ACCOUNTING REQUIREMENTS

The Distributor **must offer** an active website to allow on-line ordering and reporting. District(s) must have access to sales reports, commodity balances, and commodity reports via on-line.

19. RIGHT TO AUDIT

The Vendor shall submit to third party audits and/or inspections initiated by the District during the term of the contract and for one year following the end of the contract. Audits and/or inspections will serve to ensure compliance with contract terms, food safety guidelines, pricing and billing. Vendors must take steps to correct findings identified during audits and/or inspections, including financial restitution for any pricing or billing errors which may have occurred during the length of the contract period.

20. FORCE MAJEURE

The parties to the proposal will be excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by "Act of God", fire, strike, loss or shortage of transportation, facilities, lockout, or commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented to the other party provided that it is satisfactorily established that the non-performance is not due to the fault or negligence of the party not performing.

21. SAFETY AND SECURITY

The Vendor shall comply with all District security regulations. All products furnished and services performed, shall meet all applicable safety regulations of the Division of Occupational Safety and Health of the State of California and Safety and Health Codes of the State of California.

Vendor's representatives driving motor vehicles on school grounds must use extreme caution during times when school is in session. Any unusual condition noted by drivers, such as evidence of vandalism, power failure, fire, water damage, gas leak, etc., must be reported to the affecting district:

Fallbrook Union Elementary School District Child Nutrition Services
(760) 731-4352

22. INSURANCE

Vendor shall maintain during the life of this contract General Liability and Property Damage Insurance to protect themselves and, as an additional insured, the District, its governing boards, its officers, its agents, and its employees from all claims for personal injury, including accidental death, as well as from all claims for Property Damage arising from the operations under this contract. The minimum amounts of such insurance shall be as hereinafter set forth and be primary over any other insurance carried by the District. Vendors are required to furnish certificates of insurance, along with the additional insured endorsements, prior to start of work.

- Amounts of Insurance: Bodily Injury and Accidental Death Liability Insurance including auto (both owned and non-owned): Not Less Than \$1,000,000/\$2,000,000 Aggregate.

- Property Damage Liability Insurance including auto (both owned and non- owned): Not Less Than \$1,000,000 Aggregate.
- Insurance certificates must name the District(s) as additional insured.
- Certificate to be submitted by Vendor prior to award.

23. AFFIRMATIVE ACTION

The Vendor shall certify that it is an Equal Opportunity Employer and has made a good faith effort to improve minority employment and agrees to meet Federal and State guidelines.

No discrimination shall be made in the employment of persons upon public works in this project because of the sex, race, color, national origin or ancestry, religion, or handicap of such personnel.

24. HOLD-HARMLESS CLAUSE

To the fullest extent permitted by law, the Vendor agrees to indemnify, defend and hold the District entirely harmless from all liability arising out of: any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Vendor's employees or Vendor's subcontractor employees arising out of Vendors work under this proposal; and any loss, injury to or death of persons or damage to property caused by any act, neglect, default or omission of the Vendor, or any person, firm or corporation employed by the Vendor, either directly or by independent contract, including all damages due to loss or theft, sustained by and person, firm or corporation including the District, arising out of, or in any way connected with the Vendors work under this proposal, including injury or damage either on or off the District property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the District.

The Vendor, at the Vendor's own expense, cost and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, their officers, agents or employees in any action, suit or other proceedings as a result thereof.

25. FINGERPRINTING

Successful Vendor agrees to comply with all provisions of Education Code Section 45125.1 Vendor will conduct a criminal background check of all employees, agents, and representatives assigned to the District that will enter the sites and other District facilities for purposes of providing services covered by this proposal during normal District hours, and will certify in writing that no such employees, agents, and representatives who have been convicted of serious or violent felonies as specified will have contact with pupils. Vendor will provide the District with a list of all employees providing services pursuant to this RFP.

26. PIGGYBACK CLAUSE/OTHER DISTRICTS

For the term of the contract and any mutually agreed extensions, Distributor agrees to allow no more than 10 other school districts of like size or smaller within the California Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego to purchase identical sourcing and distribution services, upon the same terms and conditions contained in this contract. Any liability created by any such purchase orders issued against this Contract shall be the sole responsibility of the district placing the order. The District waive their right to require such other districts and offices to draw their warrants in favor of the District.

Option Granted _____ Option NOT Granted _____

27. RELATIONSHIP

While engaged in carrying out and complying with the terms and conditions of this Contract, the Contractor is an independent contractor, and is not an officer, employee or agent of the District.

28. PROVISIONS REQUIRED BY LAW

Each and every provision of law and clause required to be inserted into this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party this Contract shall forthwith be physically amended to make such insertion or correction.

29. ATTORNEYS' FEES

In the event of any dispute between the District, Individual District, and Contractor pertaining to this Contract or the services or products provided for hereunder, the prevailing party (as determined by the court or arbitrator in any such action) shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses incurred in connection therewith. The term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photo-stating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The terms and provisions of this Section shall survive the expiration or earlier termination of this Contract.

30. GOVERNING LAW AND VENUE

In the event of litigation, the proposal documents, specifications and related matters shall be governed by and construed only in accordance with the laws of the

State of California. Venue shall only be with the appropriate state or federal court located in the County of San Diego.

31. SEVERABILITY

If any provisions of the resulting Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year first above written.

DISTRICT: Fallbrook Union Elementary School District **VENDOR:**

By:

By:

Title:

Title:

Address: 321 Iowa Street, Fallbrook, CA 92028

Address:

Phone: (760) 731-5445

Phone:

Fax:

Fax:

Authorized Offices or Agents
(Corporate Seal)

Fallbrook Union Elementary School District
RFP No. 413-24-25
District Information

| | |
|------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Fallbrook Union Elementary School District | |
| Zip Code(s) of Delivery Site(s) | 92028 |
| Preferred Day(s) of Delivery | Monday/Wednesday/Friday |
| Preferred Time of Delivery | 6:00 AM – 10:00 AM (Early) |
| FUESD – CNS 409 W. Fallbrook Street, Fallbrook CA 92028 OFFICE (760)731-4352 FAX (760)723-6143 | No loading dock, Area w/lifting gate available |

**Fallbrook Union Elementary School District
RFP No. 413-24-25
Reference List**

List at least three (3) local (within one hundred miles of the District) clients for whom you have provided similar services. Show the names, addresses, and current telephone numbers of the persons who may be contacted. Information obtained through the references will be evaluated by the District. The Proposer recognizes that to ensure the effectiveness of the information review process, references must be able to speak frankly and openly. Proposer, therefore, releases the organizations and individuals listed in this form from any claim or liability, because of responses given to requests for information by the District regarding the Proposer or the Proposer's performance of work.

1. District Name: _____
Address and Telephone: _____

Contact Person: _____
E-mail: _____
Description of Work: _____

2. District Name: _____
Address and Telephone: _____

Contact Person: _____
E-mail: _____
Description of Work: _____

3. District Name: _____
Address and Telephone: _____

Contact Person: _____
E-mail: _____
Description of Work: _____

Fallbrook Union Elementary School District
RFP No. 413-24-25
Debarment Certification

California Department of Education
School Nutrition Programs Unit Child
Nutrition and Food Distribution Division
April 1998

SUSPENSION AND DEBARMENT CERTIFICATION
U.S. DEPARTMENT OF AGRICULTURE

INSTRUCTIONS: SFA to obtain from any potential vendor or existing contractor for all contracts in excess of \$100,000. This form is required each time a proposal for goods/services over \$100,000 is solicited or when renewing/ extending an existing contract exceeding \$100,000 per year. (This includes Food Service Management and Food Service Consulting Contracts.)

| |
|-------------------------------------------------------------------------------------------------------------------------|
| Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions |
|-------------------------------------------------------------------------------------------------------------------------|

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722 4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS THAT FOLLOW)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of School Food Authority

Agreement Number

Potential Vendor or Existing Contractor (Lower Tier Participant):

Printed Name

Title

Signature

Date

DO NOT SUBMIT THIS FORM. RETAIN WITH THE APPLICABLE CONTRACT OR PROPOSAL RESPONSES.

**G:SNP:DEBARMENT
INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this form, the prospective lower tier participant (one whose contract for goods or services exceeds the Federal procurement small purchase threshold fixed at \$100,000) is providing the preceding certification in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Fallbrook Union Elementary School District
RFP No. 413-24-25
Lobbying Certification

California Department of Education
School Nutrition Programs Unit Child
Nutrition and Food Distribution Division
April 1998

CERTIFICATION REGARDING LOBBYING

INSTRUCTIONS: To be completed and submitted ANNUALLY by any child nutrition entity receiving Federal reimbursement in excess of \$100,000 per year and potential or existing contractors/vendors as part of an original proposal, contract renewal or extension when the contract exceeds \$100,000.

**Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts
Exceeding \$100,000 in Federal Funds**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

[Signatures on next page.]

| | | |
|-----------------------------------------------------------------------------------------------|------------|-------------------|
| Name of School Food Authority Receiving Child Nutrition Reimbursement In Excess of \$100,000: | | Agreement Number: |
| Address of School Food Authority: | | |
| Printed Name and Title of Submitting Official: | Signature: | Date: |

(4) OR

| | | |
|--------------------------------------------------------------------|------------|-------------------|
| Name of Food Service Management or Food Service Consulting Vendor: | | |
| Printed Name and Title: | Signature: | Date: |
| Name of School Food Authority: | | Agreement Number: |

Fallbrook Union Elementary School District
RFP No. 413-24-25
Iran Contracting Certification

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT
(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A proposer who “engages in investment activities in Iran” is defined as either:

1. A proposer providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. A proposer that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The proposer shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the proposer is not identified on the DGS list of ineligible businesses or persons and that the proposer is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three- year ineligibility to proposal on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the proposer shall provide its vendor or financial institution name, and Federal ID Number if available, in completing **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the proposer and that the proposer or financial institution identified below, or financial institution identified below is not on the current DGS list of persons engaged in investment activities in Iran and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DSG list of persons engaged in investment activities in Iran.

| | |
|---------------------------------------------|----------------------------|
| Vendor Name/Financial Institution (printed) | Federal ID Number (or n/a) |
| By (Authorized Signature) | |
| Print Name and Title of Person Signing | Date Executed |

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a proposer financial institution engaged in investment activities in Iran, on a case-case basis, to be eligible for, or to proposal by or on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the proposer institution or financial identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the proposer or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

| | |
|---------------------------------------------|----------------------------|
| Vendor Name/Financial Institution (printed) | Federal ID Number (or n/a) |
| By (Authorized Signature) | |
| Print Name and Title of Person Signing | Date Executed |

Fallbrook Union Elementary School District
RFP No. 413-24-25
Non-Collusion Certification

TO BE EXECUTED BY AND SUBMITTED WITH PROPOSAL

I, _____, declare that I am the party making the foregoing proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, vendor, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proponent has not directly or indirectly induced or solicited any other proponent to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any proponent or anyone else to put in a sham proposal, or that anyone shall refrain from responding; that the proponent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any overhead, profit, or cost element of the proposal price, or of that of any other proponent, or to secure any advantage against the public body awarding the Contract of anyone interested in proposed Contract; that all statements contained in the proposal are true, and, further, that the proponent has not, directly or indirectly, submitted his or her proposal price of any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, vendor association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

Name of Vendor

Printed name of Authorized Vendor Representative

Signature of Authorized Vendor Representative

Fallbrook Union Elementary School District
RFP No. 413-24-25
Buy American Certification

The undersigned Proposer hereby certifies on behalf of _____ that it will meet Buy American requirements in Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)).

Buy American Provisions: Proposals must comply with the Buy American Provisions pursuant to Senate Bill 490 Buy American Food Act, Food and Agriculture Code sections 58596.1, et seq., and AB 778, Food and Agriculture Code section 58595. "Agricultural food products" are defined to mean a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish. Pursuant to the Buy American Food Act, only agricultural food products grown, packed, or processed domestically are authorized unless any of the following exceptions apply:

- The bid or price of a nondomestic agricultural food product is more than 25 percent lower than the bid or price of a domestic agricultural food product; **or**
- The quality of the domestic agricultural food product is inferior to the quality of the domestic agricultural food product grown, packed, or produced non-domestically; **or**
- The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the District.

Pursuant to the Assembly Bill 778, all local educational agencies must accept the bid or price for that agricultural food product when it is grown in California before accepting a bid or price for a domestic agricultural food product that is grown outside the state, when **both** of the following are met:

- The bid or price of the California-grown agricultural food product does not exceed the lowest bid or price for a domestic food product produced outside the state; **and**
- The quality of the California-grown agricultural food product is comparable to that domestic agricultural food product produced outside the state.

In order to determine compliance with the Buy American Provisions, Proposers awarded the contract will be required to provide documentation certifying compliance with the requirements of the Buy American Provisions, as mandated by the Buy American Food Act including, without limitation, specific information about the percentage of U.S. content in any processed end product.

[Signature on the next page]

If Vendor offers a non-American product, Vendor must attach the list of the product(s) to their RFP submission. Product is subject to review by the District. If the District declines a waiver, the product will be awarded to lowest priced item meeting award criteria. District's decision on approval of foreign substitutions will be final.

The documented exception must include the following:

- A description of the nondomestic commodities or products that the vendor offered and the reason they were not substituted for the domestic item.
- A synopsis of what third-party analysis was done by the vendor to determine cost and availability.

Documentation by the vendor outlining the price of both domestic and nondomestic commodities or products or lack of availability to justify the exception. The documentation states:

- The vendor informed the SFA of the nondomestic commodity or product,
- The SFA agreed to accept this food item in advance of delivery, and
- The date the commodity or product was received by the SFA.

Permission from the Districts shall be obtained before an exception to this provision is exercised.

Proposer: _____

Signature of Authorized Official: _____

Printed name of Authorized Official: _____

Title: _____

Date: _____

Fallbrook Union Elementary School District
RFP No. 413-24-25
Clean Air and Water Act Certification

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt.

Name of Bidder Company: _____

THE PROPOSER AGREES AS FOLLOWS:

- i. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued there under before the award of this contract.
- ii. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- iii. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- iv. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

- i. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).
- ii. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- iii. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c7(d)).
- iv. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
- v. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
- vi. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the Food Service Management Company.

Authorized Representative

Title

Date

**Fallbrook Union Elementary School District
RFP No. 413-24-25
Fingerprinting Certification**

To the Board of Education of Fallbrook Union Elementary School District:

I, _____, certify that:

1. I have carefully read and understand California Education Code Section 45125.1 applies to contracts for the provision of photography services to the District. Section 45125.1 requires that individuals who will come into contact with pupils of a school district must be fingerprinted and their fingerprint cards must be submitted to the California Department of Justice ("CDOJ") and Federal Bureau of Investigation ("FBI") for a criminal records check. No such individual with a record of conviction for a serious or violent felony may be assigned to perform services which will place them in contact with pupils without the prior written approval of the District. This certification does not grant such approval.

2. Due to the nature of the work _____ will be performing for the District; vendor employees may have contact with students of the District.

3. None of the employees who will be performing the work have been convicted of a violent or serious felony as defined in the Notice and in Penal Code Section 1192.7 and this determination was made by a fingerprint check through the CDOJ and FBI.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, California on _____ (date).

Signature

Vendor Name

Typed Name

Address

Title

Telephone

Email Address

Fallbrook Union Elementary School District

**RFP No. 413-24-25
Tobacco Free Certification**

The Fallbrook Union Elementary School District ("District") Governing Board ("Board") recognizes the health hazards related to the use of tobacco and tobacco products, including the breathing of second-hand smoke and desires to provide a healthy environment for students and staff.

Therefore, the Board, in the best interests of the District, its students, and its employees, and in accordance with State and Federal laws, requires the District to be tobacco-free in all district buildings, facilities, and vehicles owned, leased or operated by the Fallbrook Union Elementary School District.

Tobacco-free shall mean prohibition of the use of tobacco or tobacco products on any part of school district grounds or buildings, in district vehicles, and at any time by anyone on district property. This includes tobacco use by staff, students, parents, and other individuals at any district-sponsored event or activity.

Per the tobacco-free school policy set forth in Board Policy Number 5131.62 of the Fallbrook Union Elementary School District a copy of which is stated above and is incorporated herein by reference; Photographers and any officers, agents and employees of either of them shall be deemed visitors to the District while on District premises. Pursuant to the terms of the Policy, the use of tobacco, or any product containing tobacco or nicotine products by any visitor on school premises is prohibited.

By signing below, the undersigned acknowledges notice of Board Policy 5131.62 and remedies set forth herein.

Signature of Authorized Representative

Printed Name of Above

Title

Name of Vendor

Required Clauses for Federal Contracts

The United States Department of Agriculture (USDA) requires vendor(s) awarded contract(s) on National School Lunch Program (NSLP), National School Breakfast Program (SBP) or associated Nutrition Services and FUESD contracts to certify and assure that they will comply with all of the applicable requirements of Items 1-12 as listed below. Vendor(s) also agree these items may be amended from time to time, including adding appropriate provisions to all contracts between FUESD and for-profit contractors.

All awarded vendors/contractors:

- (1) Must be in strict compliance with the administrative, contractual or legal remedies as outlined in Model Procurement (Article IX Legal and Contractual Remedies), where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold).
- (2) Are subject to termination for cause and for convenience by the grantee or sub grantee as outlined in Model Procurement (Article VI Contract Modification and Termination Section 6.5) (All contracts in excess of \$10,000).
- (3) Agree to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- (4) Agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3). For construction and repair awarded by the recipients and sub recipients in excess of \$2000.
- (5) Agree to comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2000 awarded by grantees and sub grantees when required by Federal grant program legislation).
- (6) Agree to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and sub grantees in excess of \$100,000, which involve the employment of mechanics or laborers).
- (7) Agree FUESD Nutrition Services will obtain all rights to any discovery or invention which arises or develops in the course of or under such contract (37 CFR Part 401).
- (8) The books and records of the contractor pertaining to operations under this agreement shall be available to the Child Nutrition Program (CNP) Sponsor at any reasonable time. These records are subject to inspection or audit by representatives of the CNP Sponsor, State Agency, the USDA, and the US General Accounting Office at any reasonable time and place. The CNP Sponsor shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution (7 CFR 210.23(c), and 2 CFR Part 200.333).
- (9) Must be in strict compliance for contracts in excess of \$150,000, including subcontracts and sub grants, with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Act amended (33 U.S.C. 1251-1387) and the contractor must agree to report all violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (10) Agree to comply, for contracts in excess of \$100,000, with the Byrd Anti- Lobbying Amendment (31 U.S.C. 1352) and the New Restrictions on Lobbying and annually sign and submit to FUESD Nutrition Services the Certificate Regarding Lobbying and if applicable, the Disclosure of Lobbying Activities (Form SF-LLL).
- (11) Non-federal entities that are a state agency, or agency of a political subdivision of a state and its contractors, must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of the Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
- (12) Energy Policy and Conservation Act: The contractor shall meet the mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163,89 Stat.871).